



## **ASSESSMENT REVIEW BOARD**

Churchill Building  
10019 103 Avenue  
Edmonton AB T5J 0G9  
Phone: (780) 496-5026

### **NOTICE OF DECISION      NO. 0098 159/11**

APTAS  
#397 52471 rr 223  
Sherwood Park, AB T8A 4P9

The City of Edmonton  
Assessment and Taxation Branch  
600 Chancery Hall  
3 Sir Winston Churchill Square  
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on September 8, 2011 respecting a postponement or adjournment request for: See Schedule "A" attached.

#### **Before:**

Lynn Patrick, Presiding Officer

**Board Officer:** Segun Kaffo

#### **Persons Appearing on behalf of Complainant:**

Michele Warwa-Handel

#### **Persons Appearing on behalf of Respondent:**

Bonnie Lantz

Tanya Smith

### **BACKGROUND**

This application deals with a request by the agent representing 31 Complaints that have been scheduled by the Assessment Review Board for merit hearings. There are 22 Complaints scheduled to be heard commencing on October 31, 2011 and continuing on November 1, and 2, 2011. There are 5 Complaints scheduled for hearing on November 7, 2011 and 4 Complaints scheduled for hearing on November 8, 2011. The disclosure dates are set out in the Notices of Hearing in accordance with MRAC. The 31 Roll Numbers represented in the scheduled hearings are part of a group of Complaints that were subject of a CARB Preliminary Hearing held on July 6, 2011. The decision in the Preliminary Hearing was rendered on July 26, 2011 and cleared the way for the scheduling of the merit hearings on the Complaints filed. The Notices of Hearing for the subject Complaints were issued by the ARB on August 3, 2011 for the group to be heard

October 31 – November 2, 2011 and August 4, 2011 for the groups to be heard on November 7 and 8, 2011.

## **ISSUE**

Should a postponement of the 2011 Annual New Realty Assessments hearings scheduled for October 31-November 2, 2011, November 7, 2011 and November 8, 2011, be granted as requested by the Complainant?

## **POSITION OF THE COMPLAINANT**

The Complainants' agent provided the request in this matter in the form of a request for a preliminary hearing for the purpose of rescheduling some of the merit hearings on the days presently set aside in the Notices of Hearing and to postpone the remainder of the hearings to other dates. The application is in fact a postponement application, as the rescheduling suggested by the Applicant results in provision being made in the schedule for specific roll numbers to be heard on each of October 31, November 1, November 2, November 7 and November 8. This results in a number of hearings requiring postponement with disclosure dates likewise postponed. The Applicant submits that the current scheduling will make it difficult to meet the disclosure dates, and to have sufficient time to make a complete presentation, both of which put at risk the requirement for a full and fair hearing.

The Applicant contends that the limited time for preparation, disclosure and presentation are exceptional circumstances as set forth in MRAC, and thus there is a basis for granting a postponement of a substantial number of the hearings. The Applicant further contends that the processes needed to meet the present schedule will not allow for procedural fairness and that natural justice will not occur. The Applicant cited a Wikipedia encyclopedia article on Administrative Law, and the case of *Edmonton (City) v. Edmonton (Assessment Review Board)*, 2010 ABQB 634 (Eco Case), in support of the contention that the schedule as presently structured did not allow for adequate time to prepare the disclosure materials, nor would the number of cases set down to be heard in the allotted time be conducive to efficient, full and fair hearings.

## **POSITION OF THE RESPONDENT**

The Respondent opposes the postponement of any of the hearings set down in this matter on the basis that some inconvenience occurs in meeting the disclosure dates by the Complainants for most of the hearings being the same date of September 19, 2011. The Respondent contends that the Complaints process by the agent for the subject roll numbers has been underway since March 2011 and that notwithstanding the Preliminary Hearing matter in July, ample time is allowed in the process to prepare and file the necessary materials, and to prepare for the number of hearings being undertaken by this agent.

The Respondent further submitted that notwithstanding there being a number of cases set for each day, the panel hearing the cases can grant a postponement if more time is required to complete the hearings. The Respondent further contended that inconvenience of an agent

undertaking a number of hearings cannot be said to be exceptional circumstance warranting a postponement as set forth in MRAC, and as more fully defined by Germain, J. in the Eco Case.

## **LEGISLATION**

S. 15 of the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009

- (1) *Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.*
- (2) *A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment, as the case may be.*
- (3) *Subject to the timelines specified in section 468 of the Act, if an assessment review board grants a postponement or adjournment of a hearing, the assessment review board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted.*

## **DECISION**

The Board does not grant the postponement request.

## **REASONS FOR THE DECISION**

Since the MRAC came into force respecting the 2010 and subsequent taxation years there have been a number of postponement requests that have dealt with the question raised by section 15(1). That section provides that no postponement or adjournment may be granted except in exceptional circumstances. In each case the Board must look at the reasons advanced by the party requesting the postponement or adjournment to determine if such circumstances are present. The Regulation provided no guidance to aid the Board in that determination and until judicial interpretation was made there was some reluctance on the part of Boards to go very far in expanding such interpretation. The Eco case however provided some guidance for the Board in that respect by dealing with matters relating to document production and preparation time for hearings and thus has application to this request. It was thus decided that a delay in obtaining a document important to the issues at hand such as an expert's report would be said to be an exceptional circumstance. That has been extended to obtaining other information and documentation, or the presence of a witness deemed necessary to the issues in a complaint on the basis that without the information or documentation available in a timely manner, it could result in a lack of natural justice and result in something less than a full and fair hearing.

In this case the Complainants' agent suggests that because of the case load and the coincidence of disclosure and hearing dates for those cases, proper preparation time and hearing time is not present or allotted, which results in the potential for something less than a full and fair hearing process and a lack of natural justice.

The authorities cited by the Complainants' agent include considerable encyclopedia material on the subject of natural justice which provides a backdrop to the specific issue about which there can be no argument. It is however the application of the findings and reasons of Germaine J. in the Eco case to the issues of inconvenience brought about by heavy case loads and not because of the inability to obtain key evidence and disclosure of such that is requested of the Board in this case. There is no precedent cited as a basis for postponement as requested by the agent. The Respondent maintained such scheduling by the ARB as appears in this case is not out of the ordinary and disposition of the hearings scheduled often includes a variety of basis such as recommendations, withdrawals and the postponement of those hearings that did not occur on the scheduled days.

Dated this 12<sup>th</sup> day of September, 2011 at the City of Edmonton, in the Province of Alberta.

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Lynn Patrick, Presiding Officer

*This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA. 2000, c M-26.*

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# SCHEDULE A

<b>Roll Number</b>	<b>Municipal Address</b>	<b>Legal Description</b>	<b>Assessed Value</b>	<b>Assessment Type</b>
<b>9940905</b>	<b>18203 105 Avenue NW</b>	<b>Plan:9623416 Block: 1 Lot: 9</b>	<b>\$3,273,000</b>	<b>Annual New</b>
1008770	18010 105 Avenue NW	Plan: 7214KS Lot: 2	\$7,634,500	Annual New
8975831	9150 34 Avenue NW	Plan: 7821552 Block: 10 Lot: 7	\$8,744,000	Annual New
4150439	17865 106 Avenue NW	Plan: 9021894 Block: 3 Lot: 5	\$2,103,000	Annual New
4314720	Not provided	Plan: 9525376 Block: 10 Lot: 11	\$875,000	Annual New
4277471	18104 105 Avenue NW	Plan: 9520285 Block: 4 Lot: 2	\$1,940,000	Annual New
8873572	Not provided	Plan: 7620382 Block: 14 Lot: R4	\$1,792,500	Annual New
4150223	17834 106A Avenue NW	Plan: 9021894 Block: 1 Lot: 5	\$2,298,000	Annual New
4150389	17950 106 Avenue NW	Plan: 9021894 Block: 2 Lot: 8	\$2,163,000	Annual New
1535400	11216 156 Street NW	Plan: 987KS Block: 4 Lot: 3	\$2,727,000	Annual New
1525781	18004 107 Avenue NW	Plan: 7820005 Block: 3 Lot: 7	\$2,497,000	Annual New
4150249	10630 178 Street NW	Plan: 9021894 Block: 1 Lot: 6	\$2,306,500	Annual New
2225100	14505 130 Avenue NW	Plan: 3674NY Block: 5 Lot: 3	\$1,420,500	Annual New
1040906	9333 45 Avenue NW	Plan: 8121210 Block: 5 Lot: 41	\$3,369,500	Annual New
1555309	10733 178 Street NW	Plan: 7721110 Block: 8 Lot: 16	\$3,239,000	Annual New
1008747	18202 105 Avenue NW	Plan: 7214KS Lot: 1	\$8,626,000	Annual New
2211977	14505 Yellowhead Trail NW	Plan: 7069KS Block: 6 Lot: 10 / 11	\$6,158,500	Annual New
3033727	9210 34 Avenue NW	Plan: 8422100 Block: 10 Lot: 7A	\$1,389,000	Annual New
9942417	17803 106 Avenue NW	Plan: 9624407 Block: 3 Lot: 14	\$4,048,500	Annual New
3787744	13232 170 Street NW	LSD: 10 21-53-25-4 / LSD: 9 21-53-25-4	\$34,243,500	Annual New
10127076	1804 121 Avenue NE	Plan: 0823305 Block: 1 Lot: 1A	\$4,825,500	Annual New

4150298	17963 106A Avenue NW	Plan: 9021894 Block: 2 Lot: 1	\$2,075,500	Annual New
10057721	12232 156 Street NW	Plan: 0621031 Block: 2 Lot: 8B	\$8,091,000	Annual New
1560952	17303 103 Avenue NW	Plan: 7920757 Block: 4 Lot: 11A	\$1,947,000	Annual New
1561455	17707 105 Avenue NW	Plan: 7722579 Block: 6 Lot: 10	\$6,260,500	Annual New
4277497	18220 105 Avenue NW	Plan: 9520285 Block: 4 Lot: 4	\$3,179,000	Annual New
1554914	17225 109 Avenue NW	Plan: 7721110 Block: 8 Lot: 3	\$1,909,500	Annual New
8871857	4804 89 Street NW	Plan: 5057TR Block: 7 Lot: 2	\$8,752,500	Annual New
4277463	18004 105 Avenue NW	Plan: 9520285 Block: 4 Lot: 1	\$3,095,500	Annual New
8482440	9403 45 Avenue NW	Plan: 8022997 Block: 5 Lot: 27	\$2,631,000	Annual New
10006578	7003 67 Street NW	Plan: 0321747 Block: 4 Lot: 4	\$10,146,500	Annual New